IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 206 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF INCOME-TAX

Versus

SAURASHTRA BOTTLING PVT. LTD.

Appearance:

Mr. Mihir Joshi, Advocate with MR MANISH R BHATT
for Petitioner
Mr. S N Soparkar, Advocate for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH

Date of decision: 13/02/98

ORAL JUDGEMENT (Per R.K.Abichandani,J.)

The Income-tax Appellate Tribunal has referred the following questions for the opinion of this Court under section 256(1) of the Income-tax Act, 1961.

1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that Bottles and shells were deemed to be plant within the meaning of Section 43(3) of the Income-tax Act, 1961?

2. Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the assessee was entitled to 100% depreciation on Bottles and shells?

2. The relevant assessment year in respect of which these questions arise is the assessment year 1978-79. The assessee company derived its income from the business of bottling of soft drink. During the period relevant to the assessment year 1978-79, the assessee had purchased botles and wooden shells (crates) for bottling and distribution of its products. According to the assessee, these bottles and crates were `plant' within the meaning of section 43(3) of the said Act and since the cost of each individual item was below Rs.750/- depreciation at 100% should be allowed to the assessee company. The amount of Rs. 3,85,092/- was claimed as depreciation on these bottles and shells. The ITO held that depreciation at 100% was allowable on the bottles purchased during the previous year relevant to the assessment year. The CIT in exercise of powers conferred under section 263 of the Act examined the matter and by his order dated 26.8.93 set aside the assessment order with a direction to re-frame the assessment in which bottles and crates were not to be considered as plant. The Tribunal on appeal by the assessee held that the bottles and crates constituted plant and therefore, were entitled to 100% depreciation because cost of each bottle and crate was less than Rs. 750/-.

3. The learned counsel appearing for the Revenue argued that the bottles and crates were not covered in the inclusive definition of `plant' under section 43(3) of the Act and the word "plant" in its ordinary sense would not mean bottles used as containers for storing liquid. It was contended that the business of the assessee was of producing beverages and it cannot be said that these bottles or crates which carried beverages were being used for the purpose of that business. It was also

contended that these bottles and crates should be treated as supplies or stock-in-trade both of which were excluded from the concept of "plant". It was further argued that the bottles used for soft drinks by the assessee did not satisfy the durability test since they were glass bottles and were therefore, not durable items. It was contended that since these bottles cannot be said to be permanently employed in business and no reasonable degree of durability could be attributed to them, they cannot be described as plant. It was also contended that since bottles were not used for the purpose of the business of manufacturing its products by the assessee,they did not satisfy the functional test in the context of the business of the assessee. It was submitted that these bottles and crates did not satisfy the tests indicated by the Supreme Court in C.I.T., Andhra Pradesh Vs. Taj Mahal Hotels, reported in 82 ITR, page 44;, in the case of Scientific Engineering House (P) Ltd.vs. T.I.T., Andhra Pradesh reported in 157 ITR, page 86; and, in the case of C.I.T., Gujarat II vs. Elecon Engineering Co.Ltd. reported in 96 ITR, 672 of this Court.

4. The learned counsel for the assessee on the other hand contended that the tests laid down in the aforesaid decisions of the Supreme Court and the Gujarat High Court were fully satisfied and bottles and crates were therefore, "plant". It was also contended that the Andhra Pradesh High Court in the case of CIT vs Shri Krishna Bottlers Pvt.Ltd. reported in 175 ITR, 154 was directly concerned with the depreciation claimed in respect of bottles and crates used by the assessee manufacturing and selling soft drinks and the ratio of that decision squarely applied to the present case. It was submitted that as held by the Andhra Pradesh High Court, the bottles were essential tools of the trade, for, it was through them that soft drinks were delivered by the assessee to the customers and so were the shells and therefore, they were plant for the purpose of the Income-tax Act. It was pointed out that the Delhi High Court in CIT Vs. Prem Nath Monga Bottles (P.) Ltd., reported in 226 ITR page 864 had followed the decision of the Andhra Pradesh High Court in Krishna Bottlers Pvt.Ltd. (Supra) and taken a similar view. Reliance was also placed on the subsequent decision of Andhra Pradesh High Court in CIT vs Margdarshi Chit Fund (P) Ltd. reported in 227 ITR, 646 following the ratio of Shri Krishna Bottlers (P) Ltd. (Supra). It was also pointed out that in CIT Vs Shri Krishna Bottlers (P) Ltd., the SLP filed by the Department against the orders of the Andhra Pradesh High Court rejecting the Reference

application on the question whether depreciation was allowable on bottles and wooden crates used by the assessee in its soft drinks business, was dismissed (203 ITR [statutes], page 5). Similar order dismissing a Special Leave Petition rejecting the Reference application following the Andhra Pradesh decision in Shri Krishna Bottlers (P.) Ltd. (supra) was pointed out from 209 ITR (statutes) page 85. Another similar order dismissing the Special Leave Petition was shown from 211 ITR (statutes) page 6.

5. The question whether bottles and shells (crates) are plant or not arises in the context of the provisions of section 32 of the said Act under which depreciation is allowed in respect of buildings, machinery, plant or furniture owned by the assessee and used for the purpose of his business or profession. The word "business" is defined in section 2(13) as including any trade, commerce or manufacture or any adventure or concern, in the nature of trade, commerce or manufacture. Thus, "business" is a word of wide import. The provision regarding depreciation allowance under Section 32 gets attracted when a plant is used for business of the assessee. Expression plant has not been extensively defined and section 43(3) provides only an inclusive definition which has the effect of adding items mentioned thereunder to the meaning of the word plant as understood in its ordinary sense. The word "plant" as defined in the Oxford English Dictionary Vol. VIII at page 950 means " fixtures, implements, machinery and apparatus used in carrying on any industrial process" In the context of the provisions of section 32, we are concerned with the use of plant owned by the assessee and used for his business or profession. The word "apparatus" would mean the equipment needed for a particular purpose or function, and the word `equipment' would mean the necessary articles etc. for a purpose. The word "plant" in its ordinary sense would therefore mean the equipment needed for a particular purpose or function. Such equipment can be any article, which may be necessary for a purpose. The concept of a plant is therefore, a very wide concept and would take within its sweep any equipment or article that is required for a particular purpose. In the context of business, therefore, a plant would mean any equipment or article necessary for the purpose of that business. This result emerges from the plain meaning of word "plant" and it is not necessary to expand the meaning of that word by reference to things analogous to those included specifically in the definition of `plant' in Section 43(3), which being an inclusive definition intended to add in the meaning of that word as ordinarily

understood, cannot itself be expanded. In other words, there is no need to determine the ambit of word "plant" in its ordinary sense from what is specifically added to that meaning by providing an inclusive definition. The articles or equipments which it may become doubtful to read in the plain meaning of the word "plant" are added to that meaning so that no doubt may arise in that regard and the relevant statutory provisions can be invoked even in respect of such specified types of equipment and articles by treating them as plant when used for the purpose of business of the assessee.

6. In the present case, admittedly, the assessee carries on the business of manufacturing soft drinks and in that process, the bottling is required to be done. The bottles are containers usually of glass or plastic for storing liquid. They are articles necessary for the purpose of being used as containers for liquids and therefore, would be a "plant" even in the ordinary sense of the word "plant". The plant which is of the ownership of the assessee and used in his business, would be eligible for depreciation allowance. The nature of the business of the assessee of manufacturing soft drinks requires beverages to be bottled so that they can be supplied to the purchasers. If bottles and shells (crates) are to cease to be of the ownership of the assessee, when goods are so supplied, obviously they would not remain the plant of the ownership of the assessee for use in his business. However, if ownership over bottles and crates is retained and they are used only for delivering their contents to be taken back for such repeated use in the assessee's business, they would be plant used for the business of the assessee and, therefore, eligible to depreciation allowance under section 32(1)(ii) of the said Act. In the present case, the bottles and shells (crates) remain of the ownership of the assessee and they were not intended to be sold when the soft drinks were supplied to the purchasers who were required to return them to the assessee who was the owner of these articles. Having regard to the wide import of the word "business", when these bottles and shells (crates) were used for bottling soft drinks so that they could be supplied to the purchasers, they were obviously used as tools for the purpose of business of the assessee who continued to be the owenr of such bottles and shells (crates) even after the supply of the goods to the purchaser. For this conclusion, we have proceeded on the admitted fact that these bottles and shells (crates) remain of the owenrship of the assessee even after the goods were supplied to the purchasers and that they used to be returned to the assessee for their

repeated use for bottling and supplying the bottled drinks to the purchasers. Without use of bottles and shells (crates), it would be virtually impossible to carry on the business of manufacturing soft drinks because bottling soft drinks was an essential part of the process having regard to the nature of business.

7. The learned counsel for the revenue contended that these bottles being of glass cannot be said to be articles of durable nature. It was therefore, submitted that since this apparatus was not of durable nature, it cannot be classified as plant. It was submitted that durability was an essential test laid down by the Courts for ascertaining whether an equipment or apparatus is a plant or not. The very idea underlying Section 32 of the Act providing for depreciation allowance takes note of the fact that machinery or plant would depreciate. It cannot be said that depreciation allowance would be permissible only in respect of a plant which has a permanent durability. The tools, equipments or articles which are used for the business by the assessee are means to attain the purpose of business and are not by themselves business. In case of a plant, it would wear out or depreciate over a period of time, depending upon various factors including nature of the use to which it is put to, frequency of such use, the manner in which it is handled and other factors which may be relevant to the purpose for which the plant is used. Thus, the durability of a plant will vary having regard to the purpose for which it is used and the manner in which it is used. Therefore, no hard and fast rule can be laid down of a durability test in context of a period of time. Even a fragile thing if properly handled and intended to be used as a tool or equipment for the purpose of business by the assessee would be a plant, notwithstanding that it could be shattered into pieces by simply throwing it down or by putting it under undue stress. Therefore, the fact that the equipment or article in the nature of glass bottles were used cannot lead to a conclusion that durability test laid down by the courts is not satisfied. Unless mishandled and broken, these bottles and shells (crates) can be continued to be used repeatedly by their owner for his business of soft drinks. We are therefore, unable to accept the argument that bottles and shells (crates) should be treated as non-durable items and cannot be treated as plant.

8. The further contention canvassed on behalf of the Revenue is that these bottles and shells (crates) should be treated as supplies. It was submitted that supplies

get consumed and these glass bottles also would get consumed. As noted above, the bottles are only means to attain the purpose of business of the assessee. That what gets used be in the business may be supplies, but when bottles are used for bottling soft drinks, it cannot said that they are used up in the business. Looking at it from another angle, in case of supplies, there would be no question of any wearing out or depreciation and they get consumed in the business itself. While, in case of a plant, it would wear out or depreciate over a period of time, but, can be repeatedly used as in case of such bottles for the purpose of the same business. The bottles and shells (crates) cannot therefore, be held to be supplies in the business of manufacturing of soft drinks. They are only tools and instruments which are meant to attain the purpose of the assessees' business and do not get consumed, as supplies would, in the business of the assessee.

9. It is therefore, clear that bottles and shells (crates) used by the assessee for his business and which continue to be of his ownership even after supply of the goods to the purchasers were plant, and they were neither supplies nor stock-in-trade. The contention half-heartedly urged that these bottles and shells (crates) were stock-in-trade was diverted to new point, on realising that stock-in-trade is meant for sale, that even goods acquired for hiring purpose can be stock-in-trade. It was submitted that an inquiry ought to be made whether these bottles were acquired by the assessee for being hired to the purchasers. No such question was raised in these proceedings before the Tribunal and having regard to the nature and jurisdiction of this Court, it would not be proper to embark upon consideration of a question that has not arisen.

10. In view of what we have stated above, the Tribunal was right in treating bottles and shells (crates) as plant and holding that the assessee was entitled to 100% depreciation on them in view of the fact that their cost was less than Rs.750/-.

11. We draw strength for our aforesaid opinion from the principles laid down in the decisions of the Supreme Court in CIT vs. Taj Mahal Hotels reported in 82 ITR, page 44 and Scientific Engineering House Pvt.Ltd. Vs. CIT, A.P., reported in 157 ITR, 86 in which the decision of this Court in the case of CIT vs. Elecon Engineering Co., reported in 96 ITR, 672 was approved and also the decision of the Andhra Pradesh High Court in CIT Vs. Shri Krishna Bottles Pvt. Ltd. reported in 175 ITR 154.

In the last mentioned case, the question involved was identical. The assessee company which manufactured and sold soft drinks claimed depreciation in respect of bottles and shells used by it in the business, for the assessment year 1976-77 and the High Court held that bottles were essential tools of the trade for it was through them that soft drink was passed on from the assessee to the customers. Without bottles and shells the soft drink could not be effectively transported. The bottles and their contents were totally inter-dependent and so were the shells. The bottles and shells also satisfied the durbility test. It was therefore, held that bottles and shells were plant and the assessee was entitled to depreciation in respect of them under section 32(1)(ii) of the Act. We are in respectful agreement with the ratio of this decision. As laid down by the Supreme Court in Taj Mahal Hotels case supra) the intention of the legislature was to give the word "plant" a wide meaning. In Scientific Engineering case (supra), the Supreme Court held that the word "plant" was not necessarily confined to an apparatus which was used for mechanical operations or process or was employed in mechanical or industrial process. The test to be applied was: Did the article fulfil the function of a plant in the assessee's trading activity? Was it a tool of his trade with which he carries on his business? If answer was in the affirmative, it would be a plant. In our view, this ratio laid down by the Supreme Court when applied to the facts of this case, clearly shows that bottles and shells (crates) which were of the owenrship of the assessee were used for the purpose of his business as a tool of his trade and were therefore, plant. This Court in Elecon Engineering (Supra) (which was confirmed by the Supreme Court in 166 ITR, 66) laid down the principles applicable with regard to a plant as understood under the said Act and held that the word "plant" in its ordinary meaning is a word of wide import and it must be broadly construed having regard to the fact that articles such as books and surgical instruments were expressly covered within the definition of plant under Section 43(3) of the Act. It was held that the word "plant" would include any article or object, fixed or immovable used by a businessman for carrying on his business. It would not however cover his stock-in-trade, that is, goods bought or made for sale by the businessman.

11. In view of the above discussion, we hold that the Tribunal was right in coming to the conclusion that bottles and shells (crates) were plant within the meaning of the relevant provisions of the Act and that the

assessee was entitled to 100% depreciation on bottles and shells (crates). Both the questions are therefore, answered accordingly in the affirmative in favour of the assessee and against the Revenue. The Reference stands disposed of accordingly with no order as to costs.

(R.K.Abichandani, J.)

(Kundan Singh, J.)

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